IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.1098/2006
(Mahesh Inani Vs. State)

Date of order : May 31st, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Pradeep Shah }
Mr. R.K. Charan }
Mr. V.K. Mathur }, for the petitioner.
Mr. S.K. Vyas, Government Advocate.
Mr. Sandeep Mehta, for complainant.

By way of filing the present revision petition, the petitioner has challenged the order dated 23.11.2006 passed by Special Judge cum Sessions Judge (prevention of Corruption Act) Cases, Udaipur in Special Sessions Case No.25/2003 whereby the trial court has framed charges against the petitioner for offence under Sections 13 (2) and 13 (1) (d) of Prevention of Corruption Act, 1988 and Section 120-B I.P.C.

According to the facts of the case, a FIR was registered under the Prevention of Corruption Act against the petitioner Mahesh Inani, the then Chairman, Municipal Council, Chittorgarh, Mahesh Chandra Sharma, the then Executive Officer, Municipal Council, Chittorgarh, Sita Ram Gupta, Junior Engineer, Municipal Council, Chittorgarh, Manager, Premium Irrigation Firm, Jaipur and Manager, Jupiter Agency, Udaipur wherein allegations were levelled against the petitioner and other co-accused persons that while working as Chairman, Municipal Council, Chittorgarh, the petitioner has invited tenders for supply of fountains and in pursuance of the said tender notice dated 27.12.1996, a supply order was given to firm – Premium Irrigation Limited, Jaipur for installing fountains at four places in the city of Chittorgarh and three work orders for installing fountains were given to firm – Jupiter Agency, Udaipur. These orders were given to these firms while accepting the cost above 24% then the market rate and while doing, so as per the allegation of prosecution, the petitioner and other officials of the Municipal Council, Chittorgarh made a criminal conspiracy and it resulted into the loss of Rs.8,60,254/- to the Municipal Council, Chittorgarh. It was further alleged that the petitioner was Chairman and as per the government notification, there was no financial power left with the petitioner to accept tender beyond the rate of

Rs.5,00,000/- but as per the allegations of the prosecution, the petitioner exercised its power beyond its financial jurisdiction and while doing so, the tenders were accepted in different parts. It was also alleged that 60% of the payment was made to the firms without installation of the fountains. Therefore, as per the prosecution case, the petitioner has committed an offence, which is punishable under Sections 13 (3) and 13 (1) (d) of Prevention of Corruption Act, 1988 and as per the allegation, he was one of the member of Criminal conspiracy, therefore, charge was also framed against the petitioner for offence punishable under Section 120-B I.P.C. vide order dated 23.11.2006.

The contention of the learned counsel for the petitioner is that in this case, challan was filed against the petitioner and Jaideep Jhanwar and Ravi Bhatiya and for prosecuting the petitioner, prosecution sanction was also given by the State Government and after obtaining the prosecution sanction, the challan was filed against the petitioner before the trial court. As per the petitioner, all the alleged proceedings were initiated by Mahesh Chandra Sharma, Executive Officer, Municipal Council, Chittorgarh though he was implicated as accused in the FIR and the allegations were levelled against him also but the State Government has refused to grant prosecution sanction against Mahesh Chandra Sharma, Executive Officer and proceedings were initiated

against him under Rule 16 of the CCA Rules in pursuance of the proposal made by the Government. A charge-sheet under Section 16 of the CCA Rules was issued to Mahesh Chandra Sharma, the then Executive Office, who was named as one of the principal accused by the investigating agency and that enquiry was finally concluded vide order dated 26.7.2003. All the charges of corruption, which were levelled against the petitioners were the charges of the departmental enquiry but the same were not found to be proved in any manner and it was found that no delinquency was proved against Mahesh Chandra Sharma, who was co-accused in this case. Therefore, it is argued by the learned counsel for the petitioner that the present petitioner cannot be indulged with the criminal liability and he is entitled to be discharged from the charges levelled against him. It is argued by the learned counsel for the petitioners that all the tenders were invited under the signature of the then Executive Officer, Municipal Council, Chittorgarh, who has now attained the age of superannuation and the Government has refused to grant prosecution against against him though as per the petitioner, he was responsible for inviting tenders and finalization of tenders but the State Government while refusing to grant prosecution sanction against Mahesh Chandra Sharma proposed to initiate departmental enquiry under Rule 16 of the CCA Rules. The charges levelled against the petitioner are the same charges, which

were levelled against Mahesh Chardra Sharma. Therefore, the learned counsel for the petitioner prayed that no offence is made out against the petitioner but the prosecution has filed challan and sanction was accorded to prosecute the petitioner, who was duly elected public representative. Therefore, the Government is required to maintain equality in the matter and the Government is required to consider the facts of the case that the petitioner is also entitled for similar treatment as provided to Mahesh Chandra Sharma. Learned counsel for the petitioner has also invited the attention of this Court towards the facts of the case and contended that no case is made out for committing any offence under the provisions of Prevention of Corruption Act, so also, under the provisions of Indian Penal Code. Therefore, the petitioner was to be discharged by the learned trial court but erroneously the learned trial court has framed charges against the petitioner as aforesaid, which is totally contrary to the facts of the case also.

On the other hand, learned Public Prosecutor as well as learned counsel for the complainant has vehemently argued that in this case FIR was registered in the year 1997 at Police Station, Anti-Corruption Bureau, Chittorgarh and some writ petitions were filed before this Court because some of the employees of the Municipality were placed under suspension. Those writ

petitions were registered as SB Civil Writ Petitions Nos.2146/2002, 2147/2002, 2148/2002 and 2089/2002, in which while deciding those writ petitions vide order dated 19.4.204, the learned Single Judge of this Court has observed as follows :

> "I have gone through the writ petitions, the impugned orders, and the judgment in Mohan Lal Menaria's case. In my view Mohan Lal Menaria's case squarely covers the controversy by various principles propounded, and guidelines given therein. These writ petitions are, therefore, dismissed. However, following the directions given in Dr. Mohanlal Menaria's case, it is directed that the criminal court being the Court of Special Judge, Anti Corruption Cases, Udaipur where the challan is said to have been filed on 11.12.2003 is directed to proceed with the trial most expeditiously, and to complete it preferably within a period of one year."

Similarly, in this case, another criminal misc. petition was filed by the complainant, which was registered as SB Criminal Misc. Petition No.266/2006 wherein the learned Single Judge has passed an order on 8.9.2006 and ordered that the trial court is directed to conclude the trial at utmost expeditiously as directed by this Court on 19.4.2004 in the writ petitions filed by co-accused persons. Thus, it is clear that five orders were made by this Court for completing the trial and at the time of passing such order, the learned Single Judge of this Court has obviously applied his mind that in this case, trial is required to be completed because challan has already

been filed. Similarly, it is contended that after framing charges, as many as four prosecution witnesses were examined by the trial court and opportunity to cross-examination was given to the petitioner and he has cross-examined the witnesses before the trial court. Thus, it is obvious that the petitioner has participated in the trial and now he is challenging the order of framing charges. It is further contended by learned Public Prosecutor and learned counsel for the complainant that in this case, the petitioner being the Chairman was having financial power to take supply of Rs.5,00,000/- but under his supervision, the supply of more than Rs.5,00,000/- was ordered and according to the facts of the case, 60% of the cost was paid to the Firms concerned prior to installation of the fountains. It is also contended that the cost above 24% of market rate was accepted by the petitioner being the Chairman, therefore, obviously he has acted illegally. Thus, the State Government has rightly granted prosecution sanction against him because Government has suffered a loss of lacs of rupees. Therefore, the challan was rightly filed against the petitioner and as per the orders of this Court, the trial court has proceeded in the matter to complete the trial and the trial court has recorded the statement of prosecution witnesses and now, the petitioner is pressing hard for quashing of the charges.

Learned counsel for the complainant has invited the attention of this Court towards certain other facts of the case that this revision petition was filed in the month of December, 2006 and it was listed before the Court on various dates but the case was not argued and on the other hand, the petitioner has participated in the trial also, meaning thereby, the stage for quashing charges has gone in view of the judgment of this Court passed in SB Cri. Revision Petition No.642/1998 decided on 3.4.2000 in which the learned Single Judge of this Court has held that "this is admitted by the parties that the trial has already been started and the statement of PW-1 has been recorded. In this view of the matter, the revision petition filed against the charge cannot be entertained. The revision petition having no force is dismissed. Record of the case may be sent back forthwith." Therefore, in this view of the matter, because the petitioner has already participated in the trial and now prosecution witnesses have been examined and matter was not argued by the petitioner after filing of the petition in the month of December, 2006, so also there are orders passed by this Court for completing trial as such the present revision petition deserves to be dismissed because according to the facts of the case and the evidence collected by the prosecution, there is material against the petitioner. With regard to the ground taken by the petitioner that the Government has refused to grant prosecution

sanction against Mahesh Chandra Sharma and proposed to take departmental enquiry under CCA Rules, it is contended by the learned Public Prosecutor that what type of action is required to be taken against the employees for their actions, is within the domain of the State Government. Further, it is submitted that Executive Officer was appointed by the State Government for execution of work as per decision of elected Municipal Board but all the decisions were required to be taken by the elected body and admittedly, the petitioner was Chairman of Municipal Council, therefore, as per the decision taken by the Municipality, the Executive Officer was under obligation to act as Executive agent on behalf of the Government, therefore, for his inaction, it is decided by the Government to take appropriate action against him under Rule 16 of the CCA Rules but the petitioner was decision making authority being Chairman of the Municipal Council, as such the prosecution sanction was given for prosecuting him, therefore, his case cannot be equated with the case of Mahesh Chandra Sharma. Thus, it is prayed that the revision petition deserves to be dismissed.

I have considered the rival submissions made by the learned counsel for the parties and gone through the impugned order as well as the record of the case.

It is not disputed before me that there are orders passed by this Court for concluding the trial in various writ petitions, so also in misc. petition, the learned Single Judge has ordered for completing the trial. Similarly, it is not disputed before this Court that the petitioner has participated in the trial. It is also not disputed that four prosecution witnesses have been examined. Therefore, I am of the view that at this stage, this Court should not interfere with the proceedings of trial as held by this Court in SB Criminal Revision Petition No.642/1998 decided on 3.4.2000 in which this Court has dismissed the revision petition only on this ground that after filing the petition against the order of framing charge, the trial was started and the statement of prosecution witnesses were recorded and this Court refused to entertain such petition.

In these circumstances, without expressing any opinion on the merit of the case and while accepting the contention of learned Public Prosecutor that the case of the petitioner cannot be equated with the then Executive Officer, Municipal Council, Chittorgarh, I see no reason to interfere with the order impugned. The petitioner has already participated in the trial and he has cross-examined the prosecution witnesses. Therefore, while following the order passed by learned Single Judge in the aforesaid revision petition cited above, the revision

petition is dismissed.

(GOPAL KRISHAN VYAS), J.

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